

UPC 53552

Union Pacific Railroad - EnergySolutions

Contractual Rate Update
effective 5/18/10 - 12/31/10

Rate schedule adjustments:

- 1) Addition of rates for 137 - 144 containers
- 2) Per car conversions

Rail Cars <u>Per Train</u>	Loaded Containers <u>Per Train</u>	2010 Rate	2010 Rate
		<u>Per Container</u>	<u>Per Car</u>
34-36	133-144	\$279	\$1,116
22-33	85-132	\$409	\$1,636
21	81-84	\$416	\$1,664
17-20	68-80	\$504	\$2,016
16	61-67	\$535	\$2,140
15	57-60	\$570	\$2,280
14	53-56	\$611	\$2,444
13	49-52	\$658	\$2,632
12	45-48	\$712	\$2,848
11	41-44	\$777	\$3,108
10	37-40	\$854	\$3,416
9	33-36	\$948	\$3,792
8	29-32	\$1,066	\$4,264
7	25-28	\$1,218	\$4,872
6	21-24	\$1,421	\$5,684
5	17-20	\$1,705	\$6,820
4	13-16	\$2,131	\$8,524
3	9-12	\$2,841	\$11,364
2	5-8	\$4,261	\$17,044
1	1-4	\$8,522	\$34,088

CONFIDENTIAL
EXEMPT RAIL TRANSPORTATION CONTRACT
UP-C-53552

This Agreement is made between ENERGYSOLUTIONS, with an office at 423 W, 300 S, Suite 200, Salt Lake City, UT 84101 and the UNION PACIFIC RAILROAD COMPANY (RAILROAD), with an office at Union Pacific Center, 1400 Douglas Street, Omaha, NE 68179. Each entity may separately be referred to as a "Party" or collectively referred to, as the "Parties."

RAILROAD is actively and lawfully engaged in business as a rail carrier in intrastate and interstate commerce, subject to Subtitle IV, Title 49, United States Code (U.S.C.).

1. **Project Description:** Agreement applies to ENERGYSOLUTIONS' Department of Energy (DOE) Uranium Mill Tailings (hereinafter also referred to as "RRM" Residual Radioactive Material) removal Project at Moab, UT. It will include the transportation by rail of unit trains consisting exclusively of carloads of containers of regulated hazardous RRM on RAILROAD line between Emkay, UT (Moab) and Brendel, UT (Crescent Junction). This RRM is, at maximum, DOT classification, "Radioactive Materials" or "Low Specific Activity (LSA II) Class 7, UN 3321" as defined in 49 C.F.R. subpart 173.

2. **Term:** The Parties agree to be bound by the terms of this Agreement, upon execution by all Parties. The Initial Term of this Agreement shall commence on April 1, 2009 (Effective Date) and shall continue in effect through March 31, 2014 (Expiration Date).

In the event that EnergySolutions contract with The Department of Energy for the management and operational oversight of the Moab UMTRA Project is altered in such a way that EnergySolutions is no longer providing these support services, EnergySolutions shall be allowed, with RAILROAD consent, to assign this contract to another entity that is providing these support services to The Department of Energy.

Upon expiration of the Initial Term, both parties may agree to an additional five (5) year period (Second Term). RAILROAD reserves the right to reset the market rate after the initial five year term.

3. **Contract Rates:** For line-haul transportation of ENERGYSOLUTIONS' shipments of RRM from Moab to Crescent Junction via Specified Routing, ENERGYSOLUTIONS shall pay RAILROAD the Contract Rate(s) set forth in the attached Exhibit A. The payment of contract rates shall be made in accordance with the terms of this Agreement and additional terms set forth in Exhibit A, including the Contract Rate amount, rate adjustments and fuel surcharge program.

The Contract Rates set forth in Exhibit A are provided to ENERGYSOLUTIONS in anticipation of ENERGYSOLUTIONS tendering to RAILROAD not less than ninety-five percent (95%) of its annual RRM (Residual Radioactive Material) moving from Moab to Crescent Junction. In the event RAILROAD determines that ENERGYSOLUTIONS is tendering less than ninety-five percent (95%) of its annual RRM moving to Crescent Junction, RAILROAD reserves the right to renegotiate the Contract Rates upon not less than thirty (30) days written notice to ENERGYSOLUTIONS.

4. **Rail Transportation Service:**

4.1 RAILROAD will make every reasonable effort to provide consistent daily service of up to seven days (7) per week, for one Unit Train, at the commencement of operations on April 20, 2009 or later. RAILROAD shall have no obligation with regard to disposition of RRM tendered to it for

transportation, other than to deliver it to ENERGYSOLUTIONS, or to a landfill operator or other person solely designated, or deemed to have been designated, by ENERGYSOLUTIONS at Crescent Junction, or an alternate destination site solely designated, or deemed to have been designated, by ENERGYSOLUTIONS.

4.2 For purposes of this Agreement, "Unit Train" is defined as a single train, containing not less than 17 rail cars, with 68 loaded containers (4 containers per rail car) of RRM, and not more than 34 rail cars, with 136 loaded containers, tendered on one (1) day, from consignor at Moab to consignee at Crescent Junction. RAILROAD will be the exclusive provider of the Rail Transportation Service for the Project, except during an event of force majeure. The Rail Transportation Service provided by RAILROAD for ENERGYSOLUTIONS will be limited to the round-trip rail movement between Moab and Crescent Junction. The purpose of unit train service from Crescent Junction to Moab is the return of empty containers for subsequent loading of RRM.

5. **Switching:** RAILROAD will have primary responsibility for switching at rail origin Emkay (Moab) and rail destination Brendel (Crescent Junction). Examples include: incidental switching at the rail yards; moving, powering down, and tie-up of locomotives; and operations to ready the trains for departure. RAILROAD warrants that all personnel that may operate RAILROAD's locomotives are properly trained and licensed personnel for these functions.

5.1 In the event RAILROAD agrees to perform ENERGYSOLUTIONS requested unplanned or extraordinary switching that is beyond the planned switching of the daily scheduled unit train, the applicable charge will be the switching charge in effect on the date of performance as set forth in Union Pacific RAILROAD Accessorial Tariff 6004-series, or its successor document.

6. **Equipment:** ENERGYSOLUTIONS shall own or lease all railcars and shipping containers (Rail Equipment) used in the Transportation Services. The Rail Equipment must be in serviceable condition for the safe transport of RRM over rail lines and will be subject to inspection by, and shall be in compliance with, rules and regulations applicable to Rail Equipment established by the Association of American Railroads, the Federal Department of Transportation, the Federal Railroad Administration, and Environmental Protection Agency. RAILROAD shall have no obligation to supply Rail Equipment under this Agreement. Acceptance of ENERGYSOLUTIONS' Rail Equipment for Rail Transportation by RAILROAD will not relieve ENERGYSOLUTIONS of its obligation to provide such equipment in the required condition and shall not constitute waiver by RAILROAD of ENERGYSOLUTIONS' obligations.

7. **Hazardous RRM Shipments: Loading and Unloading**

7.1 ENERGYSOLUTIONS shall have the sole responsibility, at its sole expense, for properly packaging, labeling, marking, blocking, bracing, placarding, loading and unloading the RRM into or out of the equipment to be transported pursuant to this Agreement. ENERGYSOLUTIONS shall comply with the loading rules of the Association of American Railroad, as well as applicable federal and state loading rules, or other loading rules, as modified to meet the needs of ENERGYSOLUTIONS. These operations are subject to approval of RAILROAD, as well as applicable federal and state requirements regarding the handling of the RRM.

7.2 ENERGYSOLUTIONS shall be responsible for loading, unloading and inspecting its equipment. ENERGYSOLUTIONS shall be responsible for ensuring the exterior of equipment is free from of any contamination upon completion of loading, and for cleaning and decontamination of the equipment before its return to RAILROAD, as well as any adjacent or vicinity property at the Origin loading location, Destination unloading location, and/or any location enroute, in accordance with applicable

requirements of federal, state and local laws and regulations including, without limitation, DOT regulations at 49 C.F.R. Section 174.57. ENERGYSOLUTIONS shall have the right to arrange for such responsibilities to be carried out by third parties, while remaining obligated to RAILROAD under its promises contained in this Agreement.

7.3 ~~ENERGYSOLUTIONS~~ shall be responsible for the Class 1 air test on the empty equipment at Crescent Junction, as well as switch out bad order railcars as required. ENERGYSOLUTIONS shall begin construction to allow for unloading operations at Crescent Junction off of either of the tracks denoted as "Track A" or "Track B" also referred to as "Track 481" and "Track 482" respectively in the RAILROAD "Zone-Track-Spot" map. Items in this section will be completed at a mutually agreed upon date. Until such time as the aforementioned construction is completed, RAILROAD agrees to perform necessary commercial and bad order switching and necessary air tests required for commercial operations at Crescent Junction.

7.4 RAILROAD shall provide locomotives and Train crews to transport trains to/from loading or unloading facilities, respectively. ENERGYSOLUTIONS shall grant RAILROAD, or designated contractors, access to origin and destination facilities for the purpose of servicing and repairing locomotives.

7.5 If ENERGYSOLUTIONS has not loaded or unloaded, whichever is applicable, the train by the train's scheduled departure time on the next working day following its arrival, ENERGYSOLUTIONS shall pay RAILROAD a Detention Charge of \$350/hour; provided, however, that when a Loading Disability (defined hereinafter) occurs before the scheduled departure time, ENERGYSOLUTIONS shall not have to pay a Detention Charge. If, however, a Loading Disability occurs after the scheduled departure time, that is agreed to by both parties, ENERGYSOLUTIONS shall be responsible for the Detention Charges ENERGYSOLUTIONS has already accrued when the Loading Disability occurs and any Detention Charges that accrue after the Disability Time, as defined below.

7.6 **Loading Disability** means any of the following events which are beyond the control of ENERGYSOLUTIONS and directly results in the inability to load or unload RRM at Moab or Crescent Junction: an act of God; a strike, lockout or other labor disturbance; a riot or other civil disturbance; weather conditions sufficient to immobilize train operations and prevent loading or unloading of a train; governmental acts or regulations; or mechanical or electrical breakdown, explosion or fire at ENERGYSOLUTIONS' Moab or Crescent Junction facilities.

7.7 **Disability Time** means the period of time for which ENERGYSOLUTIONS is prevented from loading or unloading a Train at Moab or Crescent Junction, due to a Loading Disability. ENERGYSOLUTIONS shall notify RAILROAD immediately by telephone (i) as to the nature and time of commencement of the Loading Disability and (ii) as to the time of termination of the Loading Disability. ENERGYSOLUTIONS shall confirm telephone notifications in writing to RAILROAD within ten days (10) after the Loading Disability is terminated.

8. **Weight Limit:** ENERGYSOLUTIONS shall ensure weight limits of 286,000 pounds gross weight on rail for the tare weight of a rail car and 4 corresponding containers, plus lading, are not exceeded.

9. **Overloading Discovered Prior to Departure:** Upon advice to the Train crew from ENERGYSOLUTIONS or other discovery by the Train crew prior to departure from an Origin that any railcar is overloaded, RAILROAD will allow ENERGYSOLUTIONS to remove excess RRM. RAILROAD shall, at ENERGYSOLUTIONS's request set out such railcar prior to departure if trackage is available. ENERGYSOLUTIONS shall be responsible for performing and bearing all costs for

removal of excess RRM, and RAILROAD shall move such railcar to Destination in such a manner and time as is practicable after RAILROAD has received notice from ENERGYSOLUTIONS that excess RRM has been removed. The time elapsed to remove excess RRM and/or to set out such railcar(s) shall be included for purposes of computing Loading Time for the Train under terms of this Agreement. Railcars identified after departure as being overloaded by the Train crew shall be subject to UP 6004, Item 8000.

10. Equipment Mileage Allowance/Car Hire: RAILROAD shall not be responsible for making any mileage or per diem payments on the Rail Equipment.

11. Transportation Instructions: ENERGYSOLUTIONS shall provide to RAILROAD by Electronic Data Interchange (EDI), the following information for each Train in a form acceptable to both ENERGYSOLUTIONS and RAILROAD:

- a. Hazardous Material Response Code (HMRC) 49291370
- b. Class 7
- c. UN3321
- d. ENERGYSOLUTIONS "Special Exemption"
- e. Total number of containers per train
- f. Estimated weight (if available), and any special instructions; and
- g. Agreement, Origin, Destination, route, all railcar and container initials and numbers

12. Billing: RRM shipped by ENERGYSOLUTIONS under this Agreement shall be accompanied by a bill of lading and/or billing instructions:

- a. containing all information required by all applicable state and federal laws and regulations governing the transportation of the RRM.
- b. referencing, among other items, this Agreement's number, the appropriate Standard Transportation Code for RRM, the quantity of containers, and the quantity of containers and container numbers released for shipment at Moab for delivery to Crescent Junction.

In the event of a conflict between the terms of this Agreement and conditions contained on the bill of lading and/or billing instructions, the terms of this Agreement shall govern. For purposes of determining the date on which a shipment was made, the waybill date shall govern.

13. Documentation of RRM: RRM transported under this Agreement shall be as described in the Exhibit A. Such RRM shall be accompanied by all required shipping documents and shall be properly marked, labeled and placarded, as required by applicable federal, state and local laws and regulations. In addition, ENERGYSOLUTIONS shall, upon RAILROAD's request, provide RAILROAD with accurate and descriptive chemical and physical data on the character of the RRM to be transported prior to actual movement.

13.1 This Agreement is for the transportation of RRM (Residual Radioactive Material) described in Exhibit A only. Other hazardous materials or hazardous RRM shall not be tendered for transportation. Other hazardous materials or hazardous RRM prohibited from transportation include all materials designated by the Department of Transportation as hazardous for purposes of transportation as described in 49 CFR Part 172, and all materials designated as hazardous pursuant to the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 et seq.) or the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (42 U.S.C. 9601 et seq.) or the Toxic Substances Control Act (TSCA) (15 U.S.C. 2605 (e) (i) et seq.) as each may be amended from time to time, all regulations promulgated thereunder, including but not limited to materials designated as hazardous by the

Environmental Protection Agency in 40 CFR Part 261, and all RRM defined or characterized as hazardous, chemical, industrial or special RRM by the principal agency of any state having jurisdiction over the collection, transportation, transfer, treatment, dumping, storage or disposal of RRM transported under this Agreement.

13.2 Nonconforming RRM: If, subsequent to RAILROAD's acceptance of RRM for transportation pursuant to this Agreement, it is determined that such RRM does not conform to its description in Exhibit A, as well as the appropriate manifest and shipping documents accompanying such shipment, or the disposal facility at Crescent Junction refuses to accept delivery of RRM for any reason, such RRM shall be considered to be "Nonconforming RRM." ENERGYSOLUTIONS shall be solely responsible for furnishing a revised manifest within twenty-four (24) hours, excluding Saturdays, Sundays and legal holidays (as set forth in Item 1735-Series, Tariff RPS-6004-Series). If ENERGYSOLUTIONS fails to provide the revised manifest within the specified time, and if ENERGYSOLUTIONS fails to instruct RAILROAD as to the destination and description of the Nonconforming RRM, such inaction will be taken to mean ENERGYSOLUTIONS is instructing, and arranging for, RAILROAD to return the Nonconforming RRM to Origin. Said transportation shall be deemed to be at ENERGYSOLUTIONS's sole discretion, arrangement and expense. If Nonconforming RRM is returned to Origin, it shall be at the same rate the ENERGYSOLUTIONS was charged for the inbound movement; if Nonconforming RRM is transported to an alternate destination, as instructed by ENERGYSOLUTIONS, said transportation rate shall be at the applicable tariff rate in effect on the date movement occurs, absent prior agreement otherwise between the parties. ENERGYSOLUTIONS shall be solely responsible for paying any applicable demurrage, detention, hold, storage, penalties or additional transportation charges related to the handling of the Nonconforming RRM including, but not limited to, any costs incurred by RAILROAD. ENERGYSOLUTIONS is further responsible for the preparation of any further shipping documents required by federal, state or local regulations. In the event that any governmental agency or court prohibits RAILROAD from delivering Nonconforming RRM to an alternate destination or returning such Nonconforming RRM to Origin, then ENERGYSOLUTIONS shall be responsible for all costs (including attorneys' fees) incurred by the RAILROAD, due to such prohibition of delivery. ENERGYSOLUTIONS shall indemnify RAILROAD for all costs (including attorneys' fees) and hold RAILROAD harmless for any claims made against RAILROAD by private parties or governmental agencies, by virtue of the prohibition of delivery.

14. Payment Procedures (Freight Charges): ENERGYSOLUTIONS shall pay RAILROAD the Contract Rate in accordance with the credit and collection terms set forth in Uniform Freight Classification 6000-series, Rule 62, as amended from time to time.

All claims for overcharges or undercharges (including duplicate payments) for freight charges arising under this Agreement must be filed in writing within one hundred eighty (180) days after delivery of the containers of RRM to Crescent Junction. The Parties agree to forfeit any and all claims compensation under this Agreement, if a claim has not been requested either in writing or electronically within the aforementioned time period. Any court proceeding to collect an overcharge or an undercharge shall be commenced within six (6) months of the date of written declination of a timely filed claim.

15. Recordkeeping and Audits: The Parties shall keep accurate records of shipments covered by this Agreement, and designated representatives of the Parties shall, at reasonable times, have the right to inspect such records for the purpose of determining compliance with the terms of this Agreement.

16. Privileges: Stop-off or transit privileges shall not be permitted under this Agreement. Diversion and re-consignment will be allowed only as a result of a Force Majeure event causing an inability to unload at Crescent Junction. A diverted or re-consigned shipment will be subject to applicable freight rates from the point of diversion or re-consignment to the new destination.

17. Incorporation Of Tariffs, C301, Etc.: Services or other matters not specifically addressed in this Agreement will be governed by and paid for in accordance with rules, regulations, statutory provisions and provisions of the applicable tariffs, or in other rate and service terms established under 49 U.S.C. Section 11101 that would have applied in the absence of this Agreement, and such rules, regulations and provisions, as amended from time to time, are herein incorporated by reference without being specifically listed. To the extent any such rules, regulations, or provisions as they relate to the Parties are inconsistent with the terms of this Agreement, the terms of this Agreement shall govern. If for any reason, including but not limited to, exemption from regulation under 49 U.S.C. Section 10502, any rule, regulation or tariff provision incorporated by reference under this Agreement should cease to exist or become inapplicable, the last published rule, regulation or tariff provision that would have applied shall govern. Where reference is made in this Agreement to tariffs or to other rates and service terms established under 49 U.S.C. Section 11101, such references are continuous and include supplements to and successive reissues of such tariffs, rates and service terms.

18. Compliance:

18.1 Each Party shall comply with the applicable Uniform Freight Classification, the applicable rules of the Association of American Railroads, Department of Transportation, and all applicable laws, orders, regulations and rules of any governmental entities having jurisdiction in the matter with respect to, including but not limited to, transportation, transfer, treatment, dumping, storage and disposal of hazardous wastes.

18.2 Prior to any transportation of RRM hereunder, ENERGYSOLUTIONS shall obtain any and all necessary permits or licenses for the transportation, transfer, delivery, treatment, dumping, storage or disposal of RRM subject to this Agreement.

18.3 ENERGYSOLUTIONS shall be responsible for compliance with all new or changed laws and regulations that apply to, or affect, the ENERGYSOLUTIONS's responsibilities under this Agreement, and shall immediately advise RAILROAD of any new or changed law or regulation that may affect ENERGYSOLUTIONS's RRM removal, transportation and storage Project. Any new or changed law or regulation that prohibits or materially affects the Project or the transportation under this Agreement shall, at the election of any Party, constitute a substantial change in circumstances or conditions within the meaning of Section 23.

19. Indemnity

19.1 To the extent not prohibited by applicable statute, ENERGYSOLUTIONS shall indemnify, defend and hold harmless the RAILROAD, its affiliates, and their officers, agents and employees ("Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost, or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine and/or penalty (collectively, "Loss") incurred by any person (including, without limitation, the Indemnified Parties, ENERGYSOLUTIONS, or any contractor, agent or employee of the Indemnified Parties or ENERGYSOLUTIONS) arising out of or in any manner connected with (i) any work performed by ENERGYSOLUTIONS, its agents, employees, contractors and/or subcontractors, or (ii) any act or omission of ENERGYSOLUTIONS, its agents, employees, contractors, and/or subcontractors, or (iii) any breach of this agreement by ENERGYSOLUTIONS, its agents, employees, contractors and/or subcontractors.

19.2 For purposes of this Indemnity provision, the term "Loss," as referenced above, shall include, without limitation, all claims, damages, costs, fines, penalties, fees and/or other liabilities resulting from

any emission, discharge, leak, spill, evaporation, explosion, or other form of release, as that term is defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, of any hazardous or non-hazardous substance, waste, material or commodity, and all costs and expenses incurred by any one of the Indemnified Parties for emergency response, environmental investigations, removal and remedial action, damages for injury to natural resources, and environmental fines, penalties, legal fees and other associated costs of any kind or nature whatsoever.

19.3 The right to indemnification under this section shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence of the Indemnified Parties, except to the extent that the proximate cause of the Loss is attributable to the comparative negligence of the Indemnified Parties as established by the final judgment of a court of competent jurisdiction and the Indemnified Parties are not otherwise entitled to indemnification under the provisions of an applicable statute or regulation. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

19.4 Unless prohibited from doing so by an applicable provision of law, ENERGYSOLUTIONS expressly and specifically assumes potential liability under this section for claims or actions brought by ENERGYSOLUTIONS' own employees, or the employees of its agents, contractors, subcontractors, and/or affiliates. ENERGYSOLUTIONS waives any immunity it may have under worker's compensation or industrial insurance acts to avoid its indemnification obligations to the Indemnified Parties. ENERGYSOLUTIONS acknowledges that this waiver was mutually negotiated by the parties hereto.

19.5 No court or jury finding(s) in any employee's suit pursuant to a worker's compensation act or the Federal Employer's Liability Act against a party to this agreement may be relied upon or used by ENERGYSOLUTIONS in any attempt to assert liability for losses against the Indemnified Parties.

19.6 The provisions of this section shall survive the completion of any work performed by the ENERGYSOLUTIONS or the termination or expiration of this Agreement. In no event shall this section or any other provision of this agreement be deemed to limit any liability that ENERGYSOLUTIONS may have to any Indemnified Party under statute or common law.

20. **Liability Provisions:** Except as otherwise noted in this Agreement, including under Section 21, Insurance, all provisions contained in the UP-6606 Liability Tariff, and periodic amendments, will apply to this Agreement.

21. **Insurance:** ENERGYSOLUTIONS shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

21.1 Commercial General Liability (CGL) Insurance, with a limit of not less than \$2,000,000 each occurrence. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

21.2 Umbrella or Excess Insurance: If ENERGYSOLUTIONS utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

21.3 Other Requirements:

- a. All policy(ies) required above must include RAILROAD as "Additional Insured" using ISO Additional Insured Endorsement CG 20 26 (or substitute form providing equivalent coverage). The coverage provided to RAILROAD as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26 provide coverage for RAILROAD's negligence

whether sole or partial, active or passive, and shall not be limited by ENERGYSOLUTIONS's liability under the indemnity provisions of this Agreement.

- b. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement, or (b) all punitive damages are prohibited by all states in which this Agreement will be performed.
- c. Prior to commencing the work, ENERGYSOLUTIONS shall furnish RAILROAD with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- d. All insurance policies must be written by a reputable insurance company acceptable to RAILROAD or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.
- e. The fact that insurance is obtained by ENERGYSOLUTIONS or by RAILROAD on behalf of ENERGYSOLUTIONS will not be deemed to release or diminish the liability of ENERGYSOLUTIONS, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by RAILROAD from ENERGYSOLUTIONS or any third party will not be limited by the amount of the required insurance coverage.

22. Independent Contractor: RAILROAD is an independent contractor hereunder and is not, nor shall be considered or permitted to be, an agent, servant, representative, employee, joint venture or partner of ENERGYSOLUTIONS. All persons furnished, used, retained or hired by, or on behalf of, RAILROAD shall be considered to be solely the employees, contractors, representatives or agents of RAILROAD, and RAILROAD shall be responsible for payment of any and all unemployment, social security and other payroll taxes or health benefits for such persons, including any related assessments or contributions required by law. Except as set forth in the immediately preceding sentence, RAILROAD shall further maintain its own payroll accounts, records, and necessary reports as an employer and shall have sole responsibility for workers compensation and similar responsibilities, social security and income tax and similar withholding, and RAILROAD agrees to comply with all federal, state and local laws, rules and regulations pertaining thereto.

23. Force Majeure:

23.1 In the event either Party is unable to meet its contract obligations as a result of acts of God, war, terrorism, insurrection, strikes, lock-outs or other defensive shutdowns, embargoes, derailments, mechanical breakdowns, or any like causes beyond its control, that Party's obligations and those of such other Party affected by the force majeure condition shall be suspended for the duration of same; provided, however, that the Parties shall make all reasonable efforts to continue to meet their obligations during the duration of the force majeure condition; and provided, further, that the Party declaring force majeure shall promptly notify all other Parties when the force majeure condition begins to exist, the nature of the force majeure and when it is terminated.

23.2 The suspension of any obligations owing to force majeure shall neither cause the term of this Agreement to be extended nor affect any rights accrued under this Agreement prior to the force majeure condition.

24. Renegotiation:

24.1 If performance of the terms of this Agreement shall cause a material adverse effect on any Party, due to causes beyond the control of that Party, the Party suffering the material adverse effect may request renegotiation of this Agreement.

24.2 If a provision of this Agreement becomes unlawful by virtue of a change in law, regulations, or court decision, such provision shall be considered as having been severed from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect, except that if in the event of severance of such unlawful provision, or any part thereof, the maintenance of this Agreement results in a material adverse effect on any Party, the Party suffering the material adverse effect may initiate renegotiation of this Agreement. In no event shall competitive transportation proposals or other transportation opportunities be grounds for renegotiation.

24.4 If the Parties are unable to agree upon new terms within ninety (90) days of the written request for renegotiation, the dispute will be referred to the Management Committee for resolution. If the Management Committee is unable to reach agreement, the matter will be resolved in accordance with the provisions of the Arbitration section of this Agreement. New, renegotiated terms shall be a written addendum to this Agreement.

25. Management Committee: A Management Committee is hereby established for the purpose of resolving any disagreement or issues, between parties associated with this Agreement, which cannot be resolved through the normal course of negotiations between the day-to-day RAILROAD and ENERGYSOLUTIONS working team. From the ENERGYSOLUTIONS, the Management Committee shall be comprised of the Logistics Manager, the Moab UMTRA Project Manager, and the Moab UMTRA Operations Manager (or any designated successors). From the RAILROAD, the Management Committee shall be comprised of the Assistant Vice President of Sales – Industrial Products and the Assistant Vice President of Operating Services – North (or any designated successors).

26. Arbitration:

26.1 If, during the term of this Agreement, any dispute between the Parties should arise regarding the interpretation, application, or enforcement of any of the terms of this Agreement (except for disputes, claims or other matter related to loss and/or damage to Commodity), and such dispute cannot be resolved by the Parties through the Management Committee, and within sixty (60) days after either Party hereto notifies the other of its desire to arbitrate the dispute, then the dispute shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Arbitration shall be held at a mutually convenient location. It is the intent of the Parties that the agreement to arbitrate contained in this paragraph shall be valid and irrevocable, shall extend to disputes as to whether particular disagreements are arbitral, and shall be specifically enforceable by either of the Parties during and after the term of this Agreement. In interpreting this Agreement and resolving disputes hereunder, the arbitrators shall apply the law from the state identified in the Choice of Law section of this Agreement.

26.2 The arbitration shall be heard before a panel of three (3) Arbitrators, one to be selected by the RAILROAD, one to be selected by the ENERGYSOLUTIONS, and one to be selected by the other two arbitrators. If the two arbitrators previously appointed by the RAILROAD and the ENERGYSOLUTIONS are unable to agree upon the third arbitrator within fifteen (15) days, then either Party may apply to the presiding judge of any court of competent jurisdiction for appointment of a neutral third arbitrator. In the alternative, the Parties may agree on a sole arbitrator.

26.3 Each Party shall bear the expense of the arbitrator it selected; the expenses of the third arbitrator shall be borne by the Parties equally. Each Party shall bear the expense of its own counsel and experts. The Arbitrators must render their decision within ninety (90) days after the matter has been submitted.

26.4 The finding of the arbitrator shall be binding on the Parties, subject to provisions of the Federal Arbitration Act. No change in the rules of arbitration which would deprive a Party of the right to be represented by counsel, to present evidence or to cross-examine witnesses presented by the other Party shall be effective in any arbitration proceeding arising out of this Agreement.

26.5 The arbitrators shall have no power to modify any of the Agreement provisions, without the Parties' consent, and their jurisdiction is limited accordingly. The Arbitration provision of this Agreement shall be limited to contractual interpretation, matters referred to herein, and situations involving material adverse effect.

27. **Termination:** Termination of this Agreement for any reason shall not release any Party from any obligations that may have accrued prior to such termination.

28. **Line Abandonment:** The terms of this Agreement in no way obligate RAILROAD to continue ownership, maintenance (including weight standards), or operation of any rail lines. RAILROAD will not be liable for any consequential damages or increased transportation costs incurred by ENERGYSOLUTIONS as a result of RAILROAD's discontinuation of ownership, maintenance (including weight standards), or operation of any rail lines. In the event RAILROAD initiates abandonment proceedings, RAILROAD shall notify ENERGYSOLUTIONS at least 180 days prior to proposed abandonment date and may result in termination of this agreement at ENERGYSOLUTIONS' discretion. However, RAILROAD will make best effort to continue rail service to ENERGYSOLUTIONS.

29. **Confidentiality:** Neither Party may disclose any of the terms of this Agreement to any non-party without the prior written consent of the other Party except (1) as required by law; (2) to a corporate parent, subsidiary or affiliate; (3) to legal counsel, or (4) to auditors retained by a Party for the sole purpose of pre-rating ENERGYSOLUTIONS' shipments or assessing the accuracy of freight charges; provided however, ENERGYSOLUTIONS may disclose only this Agreement's rate(s) and route(s), to its auditor; further provided, however, auditor must have agreed in a legally binding instrument that the auditor will abide by this confidentiality clause as if auditor was a party to this Agreement. Each Party to this Agreement agrees to indemnify the other from and against any damage(s) suffered by a Party as a result of disclosure by a Party hereto, or by an auditor or counsel of any of the terms, conditions, or rates set forth herein in violation of this Confidentiality provision. In the event a Party determines that the terms of the Agreement have been disclosed to a non-party without the prior written approval of the non-disclosing Party, then the non-disclosing Party shall have the option to terminate this Agreement upon thirty (30) days written notice to the disclosing Party and seek whatever legal remedies it may have.

30. **Third Party Beneficiaries:** This Agreement is intended for the sole benefit of the signatories to this Agreement, and is binding upon their respective successors and assigns. This Agreement is neither intended nor construed to give any person, firm, corporation or other entity, other than the signatories hereto, their permitted successors and permitted assigns, and their affiliates any legal or equitable right, remedy or claim under this Agreement.

31. **Notices:** All notices required under this Agreement shall be in writing and shall be effective upon receipt. They shall be sent via personal delivery, via Certified U.S. Mail (Return Receipt Requested) or via overnight service which provides evidence of delivery ("Notice") addressed to the

Party to be notified at the address shown below or at any other address which such Party has given notice, in accordance with this Notices section to the other Party hereunder.


ENERGYSOLUTIONS, INC.
423 West 300 South, Suite 200
Salt Lake City, UT 84101-2028

UNION PACIFIC RAILROAD COMPANY
Senior Business Manager – Environmental Marketing and Sales
1400 Douglas St.
Omaha, NE 68179

32. **Assignment:** Subject to RAILROAD approval, this Agreement may be assigned.
33. **Default:** Any of the following events shall constitute a default hereunder: (1) failure of ENERGYSOLUTIONS to pay when due and payable any payment of charges during the term of this Agreement; or (2) failure by any Party to perform, keep or observe any material term, provision, warranty or condition contained in this Agreement, unless otherwise excused by the terms of this Agreement. If any Party to this Agreement fails to correct a default hereunder within thirty (30) days after written notice to do so, the Party serving such notice may unilaterally terminate this Agreement forthwith. Waiver of any default shall not be construed as a waiver of either a subsequent or continuing default. Termination of this Agreement shall not affect a Party's liability by reason of any act, default, or occurrence prior to such termination.
34. **Invalidity or Unenforceability:** If any provision of this Agreement should be construed or held to be void, invalid, or unenforceable by order, decree or judgment of a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby, but shall remain in full force and effect.
35. **Exhibit/Rider:** This Agreement hereby incorporates the terms and conditions of any Exhibit or Segment and any Rider hereto. In the event of a conflict between this Agreement's printed words and the Exhibit or Segment or any Rider, the Exhibit, Segment or Rider shall govern.
- OTHER GENERAL PROVISIONS**
36. **Choice of Law:** This Agreement shall be governed by the laws of the State of Utah.
37. **Non-Waiver:** No waiver or any breach of any provision of this Agreement shall constitute a waiver of any prior or subsequent breach of the same, or any prior, concurrent or subsequent breach of any other, provisions hereof and no waiver by any Party shall be effective unless made in writing and signed by an authorized representative of that Party. The failure of any Party to insist upon strict compliance with this Agreement, or any of the terms and conditions hereof, shall not be deemed a waiver of any rights or remedies that such Party may have.
38. **Headings:** The Section and Subsection headings contained in this Agreement are for reference only and are not intended to define or limit the scope of this Agreement or any term thereof.
39. **Counterparts** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original but such counterparts shall together constitute but one and the same instrument.

40. **Entire Agreement:** This Agreement, together with any Exhibits, Appendices or Riders constitutes the whole agreement between ENERGYSOLUTIONS and RAILROAD. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement supersedes all previous communications, representations, previous drafts of this Agreement, or agreements, either oral or written, between the Parties.

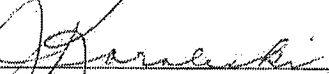
ENERGYSOLUTIONS, INC.

By: 

Title: Western Procurement Mgr.

Date Signed: 4-20-09

UNION PACIFIC RAILROAD COMPANY

By: 

Title: EYP Mktg. & Sales

Date Signed: 8/17/09

EXHIBIT A (UP-C-53552)

Origin: Emkay, UT (UW 928, Cane Creek Branch)
Destination: Brendel, UT (KP 983, Green River Subdivision)

RRM Description:

Radioactive Material, Low Specific Activity (LSA II) class 7, UN 3321, HRMC 4929137

Contract Rates:

For service of one train per day up to and including four (4) days per week

Rail Cars per Train	Loaded Containers per Train	Rate per Container
17-20	68-80	\$474
21	81-84	\$390
22-33	85-132	\$383
34	133-136	\$258

For service of one train per day more than four (4) days per week

Rail Cars per Train	Loaded Containers per Train	Rate per Container
17-20	68-80	\$484
21	81-84	\$400
22-33	85-132	\$393
34	133-136	\$268

- Trains should consist of a minimum of 17 rail cars and 68 loaded containers. In the event there are fewer than 17 railcars and 68 loaded containers, the Railroad will bill containers at rates as outlined in Exhibit A.1.
- Train may consist of no more than 34 rail cars and 136 loaded containers.
- ENERGYSOLUTIONS shall coordinate Holiday shipping schedules in advance with the RAILROAD. By mutual agreement between the parties, trains may or may not run on the following observed holidays, New Years Day, Presidents Day, Memorial Day, Independence Day (observed date may vary), Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Day (observed date may vary), Day after Christmas (observed date may vary).
- ENERGYSOLUTIONS shall provide notice of not less than thirty (30) days to RAILROAD of their intention to change from one (1) train per day up to and including four (4) days per week to one (1) train per day more than four (4) days per week. Rates for more than four (4) days per week shall then remain in effect, without regard for the actual number of days on which trains are shipped, until such time as ENERGYSOLUTIONS shall provide notice of not less than sixty (60) days to RAILROAD of their intention to revert to one (1) train per day up to and including four (4) days per week.

The Contract Rates apply for Origin, Destination, as well as the routing to which the Contract Rate applies for the services provided by RAILROAD hereunder. ENERGYSOLUTIONS agrees to pay the applicable Contract Rate, and in accordance with it tender for daily train service.

The Contract Rates include the southbound return of the empty Unit Train used to transport RRM on the just completed northbound loaded movement.

Contract Rate Adjustment: The Contract Rate Adjustment for service under this Agreement shall equal the annual percent changes in the All-Inclusive Index Less Fuel (AAILF), plus 3%. The Contract Rate Adjustment will be applied to the current base rate on each January 1 during the Initial and Second Term of the Agreement.

If additional investment is required by RAILROAD to support this environmental remediation effort, RAILROAD reserves the right to adjust the Contract Rates accordingly.

Surcharge: In the event the average price of Retail On-Highway Diesel Fuel (as set forth below, the "HDF Average Price"), calculated monthly based on prices reported on the U.S. Department of Energy Website (eia.doe.gov) equals or exceeds \$2.30 per gallon, UP will add a mileage-based fuel surcharge to the freight charges under this Agreement. The fuel surcharge shall be applied to each shipment having a waybill dated on or after the 1st day of the second calendar month following the calendar month of a given HDF Average Price (e.g., a fuel surcharge applied beginning July 1 would be based on May's HDF Average Price). The HDF Average Price for a given calendar month will be determined by adding the weekly Retail On-Highway Diesel Fuel prices reported on the U.S. Department of Energy Website (eia.doe.gov), and dividing the result by the number of weeks so reported. The result will be rounded to the nearest tenth of a cent. If the Department of Energy ceases reporting of the price of Retail On-Highway Diesel Fuel, UP will employ a suitable substitute source of price or measure. Schedule reflects the applicable fuel surcharges within the HDF Average Price ranges noted below:

HDF Average Price (Per Gallon) Fuel Surcharge (Cents Per Mile Per Car)

\$0.00 to \$2.299	\$0.00
\$2.30 to \$2.349	\$0.05
\$2.35 to \$2.399	\$0.06
\$2.40 to \$2.449	\$0.07
\$2.45 to \$2.499	\$0.08
\$2.50 to \$2.549	\$0.09
\$2.55 to \$2.599	\$0.10
\$2.60 to \$2.649	\$0.11
\$2.65 to \$2.699	\$0.12
\$2.70 to \$2.749	\$0.13
\$2.75 to \$2.799	\$0.14
\$2.80 to \$2.849	\$0.15
\$2.85 to \$2.899	\$0.16
\$2.90 to \$2.949	\$0.17
\$2.95 to \$2.999	\$0.18
\$3.00 to \$3.049	\$0.19
\$3.05 to \$3.099	\$0.20
\$3.10 to \$3.149	\$0.21
\$3.15 to \$3.199	\$0.22
\$3.20 to \$3.249	\$0.23
\$3.25 to \$3.299	\$0.24
\$3.30 to \$3.349	\$0.25

Each \$0.05 per gallon increase thereafter additional 1 cent per mile

ALK Technologies' PC*Miler Rail Fuel Surcharge (FNII), as amended from time-to-time, will be used to calculate total miles. If interline price routing is involved, mileages will be calculated via the revenue route junction(s) of the price used to rate the shipment.

EXHIBIT A.1 (UP-C-53552)

Rates offered for Less-Than-Full Train shipments

For service of one train per day up to
and including four (4) days per week

Rail Cars per Train	Loaded Containers per Train	Rate per Container
16	61-64	\$ 504
15	57-60	\$ 538
14	53-56	\$ 577
13	49-52	\$ 622
12	45-48	\$ 674
11	41-44	\$ 736
10	37-40	\$ 810
9	33-36	\$ 901
8	29-32	\$ 1,014
7	25-28	\$ 1,160
6	21-24	\$ 1,355
5	17-20	\$ 1,628
4	13-16	\$ 2,037
3	9-12	\$ 2,719
2	5-8	\$ 4,083
1	1-4	\$ 8,176

For service of one train per day more
than four (4) days per week

Rail Cars per Train	Loaded Containers per Train	Rate per Container
16	61-64	\$ 514
15	57-60	\$ 548
14	53-56	\$ 587
13	49-52	\$ 632
12	45-48	\$ 684
11	41-44	\$ 746
10	37-40	\$ 820
9	33-36	\$ 911
8	29-32	\$ 1,024
7	25-28	\$ 1,170
6	21-24	\$ 1,365
5	17-20	\$ 1,638
4	13-16	\$ 2,047
3	9-12	\$ 2,729
2	5-8	\$ 4,093
1	1-4	\$ 8,186

EXHIBIT B (UP-C-53552)



ENERGYSOLUTIONS FORM ES-TC2 SERVICES (02/09)

PURCHASE ORDER/SUBCONTRACT GENERAL PROVISIONS FOR USE WITH PURCHASE ORDERS/SUBCONTRACTS
FOR COMMERCIAL SERVICES UNDER A U.S. GOVERNMENT PRIME CONTRACT

SECTION I: GENERAL PROVISIONS

- | | |
|--|---|
| 1. Definitions | 17. Insurance/Entry on EnergySolutions Property |
| 2. Acceptance of Contract/Terms and Conditions | 18. RESERVED |
| 3. Applicable Laws | 19. Maintenance of Records |
| 4. Assignment | 20. RESERVED |
| 5. Communication With EnergySolutions Customer | 21. Payments, Taxes, and Duties |
| 6. Contract Direction | 22. RESERVED |
| 7. Disputes | 23. RESERVED |
| 8. Electronic Contracting | 24. RESERVED |
| 9. Default | 25. RESERVED |
| 10. Extras | 26. Release of Information |
| 11. RESERVED | 27. Severability |
| 12. Furnished Property | 28. Survivability |
| 13. Gratuities/Kickbacks | 29. Timely Performance |
| 14. Independent Contractor Relationship | 30. Waivers, Approvals, and Remedies |
| 15. Information of EnergySolutions | 31. Stop Work |
| 16. Information of Union Pacific | 32. Warranty |

SECTION I: GENERAL PROVISIONS

1. DEFINITIONS

The following terms shall have the meanings set forth below:

- (a) "Contract" means this instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, including these General Provisions, all referenced documents, exhibits, and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Task Order or other such document) the term "Contract" shall also mean the release document for the Work to be performed.
- (b) RESERVED
- (c) "EnergySolutions" means EnergySolutions Inc., acting through its companies or business units, as identified on the face of this Contract. If a subsidiary or affiliate of EnergySolutions Inc. is identified on the face of this Contract then "EnergySolutions" means that subsidiary or affiliate.
- (d) "EnergySolutions Procurement Representative" means the person, identified in Section G.2 of this Contract, authorized by EnergySolutions' procurement organization to administer and/or execute this Contract.
- (e) "Union Pacific" means the party identified on the face of this Contract with whom EnergySolutions is contracting.
- (f) "Work" means all required labor, articles, materials, supplies, goods, and services constituting the subject matter of this Contract.

2. ACCEPTANCE OF CONTRACT TERMS AND CONDITIONS

- (a) This Contract integrates, merges, and supersedes any prior offers, negotiations, and agreements concerning the subject matter hereof and constitutes the entire agreement between the Parties.
- (b) Union Pacific's acknowledgment, acceptance of payment, or commencement of performance, shall constitute Union Pacific's unqualified acceptance of this Contract.
- (c)

3. APPLICABLE LAWS

- (a) This Contract shall be governed by and construed in accordance with the laws of the State of Utah.
- (b) The parties agree to comply with all applicable local, state, and federal laws, orders, rules, regulations, and ordinances. With respect to its work on its property which is performed by Union Pacific, Union Pacific shall procure all licenses/permits and pay all fees and other required charges, and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority.
- (c) Union Pacific shall be responsible for compliance with all requirements and obligations relating to its employees under applicable local, state, and federal statutes, ordinances, rules and obligations including, but not limited to, employer's obligations under laws relating to: income tax withholding and reporting; civil rights; equal employment opportunity; discrimination on the basis of age, sex, race, color, religion, disability, national origin, or veteran status; overtime; minimum wage; unemployment insurance; employer's liability insurance; veteran's rights; and all other employment, labor or benefits related laws.

5. COMMUNICATION WITH ENERGYSOLUTIONS CUSTOMER

EnergySolutions shall be solely responsible for all liaison and coordination with the EnergySolutions customer, including the U. S. Government, as it affects the applicable prime contract, this Contract.

6. CONTRACT DIRECTION

- (a) Only the EnergySolutions Procurement Representative has authority on behalf of EnergySolutions to make changes to this Contract. All amendments must be in writing and executed by the parties.
- (b) EnergySolutions engineering and technical personnel may from time to time render assistance or give technical advice or discuss or affect an exchange of information with Union Pacific's personnel concerning the Work hereunder. No such action shall be deemed to be a change under the "Changes" clause of this Contract and shall not be the basis for equitable adjustment.
- (c) Each party shall appoint and identify to the other party a Technical Representative(s) who shall be responsible for maintaining liaison between the parties.

7. DISPUTES

All disputes under this Contract that are not disposed of by mutual agreement may be decided by recourse to an action at law or in equity. Until final resolution of any dispute hereunder, both parties shall diligently proceed with the performance of their obligations under this Contract.

8. ELECTRONIC CONTRACTING

The parties agree that if this Contract is transmitted electronically neither party shall contest the validity of this Contract, or any acknowledgement thereof, on the basis that this Contract or acknowledgement contains an electronic signature.

9. DEFAULT

- (a) EnergySolutions, by written notice, may terminate this Contract for default, in whole or in part, if Seller (1) fails to comply with any of the terms of this Contract; (2) fails to make progress so as to endanger performance of this Contract; (3) fails to provide adequate assurance of future performance; (4) files or has filed against it a petition in bankruptcy; or (5) becomes insolvent or suffers a material adverse change in financial condition. Seller shall have ten (10) days (or such longer period as EnergySolutions may

authorize in writing) to cure any such failure after receipt of notice from EnergySolutions. Default involving performance delays, bankruptcy or adverse change in financial condition shall not be subject to the cure provision.

(b) Following a termination for default of this Contract, Seller shall be compensated only for Work actually delivered and accepted. EnergySolutions may require Seller to deliver to EnergySolutions any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Contract. EnergySolutions and Seller shall agree on the amount of payment for these other deliverables.

(c) In the event of a termination for default, Seller shall be liable to EnergySolutions for cover costs, in addition to EnergySolutions' other rights and remedies at law or in equity.

(d) Upon the occurrence and during the continuation of a default, EnergySolutions may exercise any and all rights and remedies available to it under applicable law and equity including without limitation cancellation of this Contract. If after termination for default under this Contract, it is determined that Seller was not in default, such termination shall be deemed a termination for convenience.

(e) Seller shall continue all Work not terminated or cancelled.

10. EXTRAS

Work shall not be supplied in excess of quantities specified in this Contract. Union Pacific shall be liable for handling charges and return shipment costs for any excess quantities.

11. RESERVED

12. FURNISHED PROPERTY

(a) EnergySolutions may provide to Seller property owned by either EnergySolutions or its customer (Furnished Property). Furnished Property shall be used only for the performance of this Contract.

(b) Title to Furnished Property shall remain in EnergySolutions or its customer. Seller shall clearly mark (if not so marked) all Furnished Property to show its ownership.

(c) Except for reasonable wear and tear, Union Pacific shall be responsible for, and shall promptly notify EnergySolutions of, any loss or damage. Without additional charge, Union Pacific shall manage, maintain, and preserve Furnished Property, with the exception of RAILROAD equipment (i.e. ABC cars, containers, etc.), and shall deliver or make such other disposal as may be directed by EnergySolutions.

13. GRATUITIES/KICKBACKS

(a) No gratuities (in the form of entertainment, gifts or otherwise) for the purpose of obtaining or rewarding favorable treatment as a supplier, and no kickbacks, shall be offered or given by either party to any employee of the other.

(b) By accepting this Contract, Union Pacific certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58), both of which are incorporated herein by this specific reference, except that paragraph (e)(1) of FAR 52.203-7 shall not apply.

14. INDEPENDENT CONTRACTOR RELATIONSHIP AND UNION PACIFIC PERSONNEL

(a) Union Pacific's relationship to EnergySolutions shall be that of an Independent Contractor and this Contract does not create an agency, partnership, or joint venture relationship between EnergySolutions and Union Pacific or EnergySolutions and Union Pacific personnel. Personnel supplied by Union Pacific hereunder shall be deemed employees of Union Pacific and shall not for any purposes be considered employees or agents of EnergySolutions. Union Pacific assumes full responsibility for the actions and supervision of such personnel while performing services under this Contract.

(b) Reserved

(c) Nothing contained in this Contract shall be construed as granting to Union Pacific or any personnel of Union Pacific rights under any EnergySolutions benefit plan.

(d) Union Pacific will use reasonable efforts to ensure that Union Pacific personnel that are assigned to work on EnergySolutions' or Customer's premises comply with any on-premises guidelines and: (1) do not bring weapons of any kind onto EnergySolutions' or Customer's premises; (2) do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on EnergySolutions' or Customer's premises; (3) do not possess hazardous materials of any kind on EnergySolutions' or Customer's premises without EnergySolutions' authorization; (4) remain in authorized areas only; (5) will not conduct any non-EnergySolutions related business activities (such as interviews, hirings, dismissals or personal solicitations) on EnergySolutions' or Customer's premises; (6) will not send or receive non-EnergySolutions related mail through EnergySolutions' or Customer's mail systems; and (7) will not sell, advertise or market any products or memberships, distribute printed, written or graphic materials on EnergySolutions' or Customer's premises without EnergySolutions' written permission or as permitted by law.

(e) All persons, property, and vehicles entering or leaving EnergySolutions' or Customer's premises are subject to search.

(f) Union Pacific shall promptly notify EnergySolutions and provide a report of any accidents or security incidents involving loss of or misuse or damage to EnergySolutions' or Customer's intellectual or physical assets, and all physical altercations, assaults, or harassment.

(g) Union Pacific must coordinate with EnergySolutions to gain access to EnergySolutions' or Customer's premises.

(h) Union Pacific personnel: (1) will not remove EnergySolutions or Customer assets from EnergySolutions' or Customer's premises without EnergySolutions authorization; (2) will use EnergySolutions or Customer assets only for purposes of this Contract; (3) will only connect with, interact with or use computer resources, networks, programs, tools or routines that EnergySolutions agrees are needed to provide services; and (4) will not share or disclose user identifiers, passwords, cipher keys or computer dial

port telephone numbers. EnergySolutions may periodically audit Seller's data residing on EnergySolutions' or Customer's information assets.

- (i) EnergySolutions may, at its sole discretion, have Seller remove any specified employee of Seller from EnergySolutions' premises and request that such employee not be reassigned to any EnergySolutions premises under this Contract. (j) Union Pacific shall provide EnergySolutions any information about Union Pacific's personnel that EnergySolutions is required by law to obtain, including information on "leased employees" and "management services organization" as these terms are used in Sections 414(m), (n), and (o) of the Internal Revenue Code.
- (k) Violation of this clause may result in termination of this Contract in addition to any other remedy available to EnergySolutions at law or in equity. Union Pacific shall reimburse EnergySolutions or Customer for any unauthorized use of EnergySolutions or Customer assets.
- (l) Union Pacific shall advise EnergySolutions Procurement Representative of any unauthorized direction or course of conduct.
- (m)
- (n) Union Pacific shall indemnify and hold harmless EnergySolutions from and against any actual or alleged liability, loss, costs, damages, fees of attorneys, and other expenses which EnergySolutions may sustain or incur in consequence of (1) Union Pacific's failure to pay any employee for the Work rendered under this Contract, including any claim made by Union Pacific personnel against EnergySolutions associated with Union Pacific's failure to pay any employee for the work rendered under this contract.

15. INFORMATION OF ENERGYSOLUTIONS

- (a) Union Pacific shall not reproduce or disclose any information, knowledge, or data of EnergySolutions marked as confidential that Union Pacific may receive from EnergySolutions or have access to, including proprietary or confidential information of EnergySolutions or of others when in possession of EnergySolutions (hereinafter EnergySolutions information) without prior written consent of EnergySolutions. Union Pacific agrees not to use any EnergySolutions information for any purpose except to perform this Contract. Union Pacific shall maintain data protection processes and systems sufficient to adequately protect EnergySolutions information.
- (b) Reserved
- (c) EnergySolutions information provided to the Union Pacific remains the property of EnergySolutions. Within thirty (30) days of the expiration or termination of this Contract or upon the request of EnergySolutions, Union Pacific shall return or certify the destruction of all EnergySolutions information and any reproductions, and the Union Pacific shall promptly surrender all information or proprietary data developed by Union Pacific in performance of this Contract, unless its retention is authorized in writing by EnergySolutions.

16. INFORMATION OF UNION PACIFIC

Union Pacific shall not provide any proprietary information to EnergySolutions without prior execution of a proprietary information agreement by the parties.

- 17. **INSURANCE/ENTRY ON ENERGYSOLUTIONS PROPERTY** (a) In the event that Seller, its employees, agents, or subcontractors enter the site(s) of EnergySolutions or its customers for any reason in connection with this Contract then Seller and its subcontractors shall procure and maintain for the performance of this Contract worker's compensation, comprehensive general liability, bodily injury and property damage insurance in reasonable amounts, and such other insurance as EnergySolutions may require. Alternatively, Union Pacific may provide evidence of self-insurance satisfactory to EnergySolutions in lieu of the requirements set forth herein. In addition, Union Pacific shall comply with all site requirements. Union Pacific shall provide EnergySolutions thirty (30) days advance written notice prior to the effective date of any cancellation or change in the term or coverage of any of Seller's required insurance, provided however such notice shall not relieve Seller's of its obligations to procure and maintain the required insurance. If requested, Seller shall send a "Certificate of Insurance" showing Seller's compliance with these requirements. Seller shall name EnergySolutions as an additional insured for the duration of this Contract. Insurance maintained pursuant to this clause shall be considered primary as respects the interest of EnergySolutions and is not contributory with any insurance which EnergySolutions may carry. Seller's obligations for procuring and maintaining insurance coverages are freestanding and are not affected by any other language in this Contract.

18. RESERVED

19. MAINTENANCE OF RECORDS

- (a) Union Pacific shall maintain complete and accurate records in accordance with generally accepted accounting principles to substantiate Union Pacific's charges hereunder. Such records shall include, but not be limited to, applicable time sheets, job cards, phone bills, travel receipts and job summaries. Union Pacific shall retain such records for (3) years from date of final invoice of this Contract.
- (b) EnergySolutions shall have access to such records, and any other records Union Pacific is required to maintain under this Contract, for the purpose of audit during normal business hours, upon reasonable notice for so long as such records are required to be retained.

20. RESERVED

21. PAYMENTS, TAXES, AND DUTIES

- (a) Reserved

- (b) Each payment made shall be subject to reduction to the extent of amounts which were not properly payable, and shall also be subject to reduction for overpayments. Union Pacific shall promptly notify EnergySolutions of any such overpayments found by Union Pacific.
- (e) Reserved
- (d) Payment shall be deemed to have been made as of the date of mailing EnergySolutions' payment or electronic funds transfer.
- (e) Unless otherwise specified, prices include all applicable federal, state, and local taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice.
- (f) Union Pacific agrees to submit upon the request of EnergySolutions' Procurement Representative a release of claims for payments due under this contract upon final payment.

22. RESERVED

23. RESERVED

24. RESERVED

25. RESERVED

26. RELEASE OF INFORMATION

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Contract or the subject matter hereof, will be made by either party without the prior written approval of the other.

27. SEVERABILITY

Each clause, paragraph and subparagraph of this Contract is severable, and if one or more of them are declared invalid, the remaining provisions of this Contract will remain in full force and effect.

28. SURVIVABILITY

- (a) If this Contract expires, is completed, or is terminated, neither party shall be relieved of those obligations contained in the following clauses: Applicable Laws; Electronic Contracting; Independent Contractor Relationship and Union Pacific Personnel; Information of EnergySolutions; Insurance/Entry on EnergySolutions Property; Intellectual Property; Maintenance of Records; Prohibited Software; Release of Information.
- (b) Those U. S. Government flowdown provisions that by their nature should survive.

29. TIMELY PERFORMANCE

- (a) Union Pacific's timely performance is a critical element of this Contract.
- (b) If Union Pacific becomes aware of difficulty in performing the Work, Union Pacific shall timely notify EnergySolutions, in writing, giving pertinent details. This notification shall not change any performance schedule.

30. WAIVERS, APPROVALS, AND REMEDIES

- (a) Failure by either party to enforce any of the provisions of this Contract or applicable law shall not constitute a waiver of the requirements of such provision or law, or as a waiver of the right of a party thereafter to enforce such provision or law.
- (b) EnergySolutions' approval of documents shall not relieve Union Pacific of its obligations to comply with the requirements of this Contract.
- (c) The rights and remedies of either party in this Contract are cumulative and in addition to any other rights and remedies provided by law or in equity.

31. STOP WORK

Union Pacific shall stop Work for up to ninety (90) days in accordance with any written notice received from EnergySolutions, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

32. WARRANTY

- (a) Union Pacific warrants that it is and shall remain free of any obligation or restriction which would interfere or be inconsistent with or present a conflict of interest concerning the Work to be furnished by Seller under this Contract.
- (b) Union Pacific warrants that it will perform the services under this Contract with the degree of high professional skill and sound practices and judgment which is normally exercised by recognized professional firms with respect to services of a similar nature.
- (c) Union Pacific warrants that all Work furnished pursuant to this Contract shall strictly conform to applicable descriptions, directions, and other requirements of this Contract and be free from defects, material, and workmanship. If any non-conforming Work is identified, Union Pacific, at EnergySolutions option, shall promptly re-perform the Work. Re-performance of Work shall be at Union Pacific's expense. If re-performance of Work is not timely, EnergySolutions may elect to perform the Work at Seller's expense. All warranties shall run to EnergySolutions and its customers.

ENERGYSOLUTIONS

ENERGYSOLUTIONS FORM ES-TC2 DOE (12/07) U.S. DEPARTMENT OF ENERGY (DOE) FLOWDOWN PROVISIONS FOR USE WITH PURCHASE ORDERS/SUBCONTRACTS FOR COMMERCIAL ITEMS UNDER A U.S. DOE PRIME CONTRACT

- A. INCORPORATION OF DOE/DEAR CLAUSES
- B. GOVERNMENT SUBCONTRACT
- C. NOTES
- D. AMENDMENTS REQUIRED BY PRIME CONTRACT
- E. PRESERVATION OF THE GOVERNMENT'S RIGHTS
- F. DOE FAR SUPPLEMENT FLOWDOWN CLAUSES

A. INCORPORATION OF DOE/DEAR CLAUSES

The Department of Energy (DOE) Supplement to the FAR, the Department of Energy Acquisition Regulation (DEAR), clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different from the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead. The Contracts Disputes Act shall have no application to this Contract. Any reference to a "Disputes" clause shall mean the "Disputes" clause of this Contract.

B. GOVERNMENT SUBCONTRACT

This Contract is entered into by the parties in support of a U.S. Government contract.

As used in the clauses referenced below and otherwise in this Contract:

- 1. "Commercial Item" means a commercial item as defined in FAR 2.101.
- 2. "Contract" means this contract.
- 3. "Contracting Officer" shall mean the U.S. Government Contracting Officer for EnergySolutions' government prime contract under which this Contract is entered.
- 4. "Contractor" or "Offeror" means the Seller, as defined in EnergySolutions FORM TC2, acting as the immediate (first-tier) subcontractor to EnergySolutions.
- 5. "DOE" means the Department of Energy.
- 6. "FERC" means the Federal Energy Regulatory Commission.
- 7. "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.
- 8. "Prime Contract" means the contract between EnergySolutions and the U.S. Government or between EnergySolutions and its higher-tier contractor who has a contract with the U.S. Government.
- 9. "Subcontract" means any contract placed by the Contractor or lower-tier subcontractors under this Contract.

C. NOTES

- 1. Substitute "EnergySolutions" for "Government" or "United States" as applicable throughout this clause.
- 2. Substitute "EnergySolutions Procurement Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
- 3. Insert "and EnergySolutions" after "Government", as appropriate, throughout this clause.
- 4. Insert "or EnergySolutions" after "Government" throughout this clause.
- 5. Communication/notification required under this clause from/to the Contractor to/from the Contracting Officer shall be through EnergySolutions.
- 6. Insert "and EnergySolutions" after "Contracting Officer", as appropriate throughout the clause.
- 7. Insert "or EnergySolutions Procurement Representative" after "Contracting Officer", as appropriate throughout the clause.

D. AMENDMENTS REQUIRED BY PRIME CONTRACT

Contractor agrees that upon the request of EnergySolutions it will negotiate in good faith with EnergySolutions relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as EnergySolutions may reasonably deem necessary in order to comply with the provisions of the applicable Prime Contract or with the provisions of amendments to such Prime Contract. If any such amendment to this Contract causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Contract.

E. PRESERVATION OF THE GOVERNMENT'S RIGHTS

If EnergySolutions furnishes designs, drawings, special tooling, equipment, engineering data or other technical or proprietary information (Furnished Items) to which the U. S. Government owns or has the right to authorize the use of, nothing herein shall be

construed to mean that EnergySolutions, acting on its own behalf, may modify or limit any rights the Government may have to authorize the Contractor's use of such Furnished Items in support of other U. S. Government prime contracts.

F. DOE FAR SUPPLEMENT FLOWDOWN CLAUSES

1. The following DEAR clauses apply to this Contract:

REFERENCE - TITLE

(a) 952.204-73: FACILITY CLEARANCE (MAY 2002)

2. The following DEAR clauses apply as indicated:

REFERENCE - TITLE

(a) 952.204-2: SECURITY (MAY 2002) (Applicable if this Contract involves classified information. Replaces FAR 52.204-2.)

(b) 952.204-70: CLASSIFICATION/DECLASSIFICATION (SEP 1997) (Applicable if this Contract involves classified information.)

(c) 952.204-71: SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994) (Applicable if this Contract is for unclassified research which may involve making information about nuclear technology available to certain sensitive foreign nations as indicated in DOE Order 1240.2. Notes 1 and 2 apply. In paragraph (a), substitute "40 days" for "60 days" in the second sentence.)

(d) 952.250-70: NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996) (Applicable if this Contract involves the risk of public liability, as defined by the Atomic Energy Act and described in paragraph (d)(2). This clause is not applicable if the Contractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements or NRC agreements of indemnification.) ES-TC2 DOE (12/07) 1

PRIME CONTRACT FLOWDOWN CLAUSES

CONFIDENTIALITY OF INFORMATION

- (a) To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the DCO in writing, or as such disclosure may be authorized by the contract terms or as may be required by a court, Government agency, or regulatory agency, or as otherwise required by law. If the Contractor is required to make such disclosure, the Contractor shall promptly notify the DCO, and shall take such further efforts as necessary to minimize the disclosure. The foregoing obligations, however, shall not apply to:
- (1) Information which, at the time of receipt by the Contractor, is in public domain;
 - (2) Information which is published after receipt thereof by the Contractor, or otherwise becomes part of the public domain through no fault of the Contractor;
 - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
 - (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in conformance.
- (b) The contractor shall obtain the written agreement, in a form satisfactory to the DCO, of such employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.
- (c) The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the DCO. From time to time, upon request of the DCO, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary.
- (d) The Contractor agrees that upon request by DOE it will execute a DOE- approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by the Contractor's personnel.
- (e) This clause shall flow down to all subcontract and consultants' agreements.

CLAUSES INCORPORATED BY REFERENCE

Subcontractor recognizes that performance of work under this Contract is subject to certain requirements of the Federal Acquisition Regulations (FAR) and relevant Agency supplements contained in Contractor's prime contract. Exhibit B lists certain clauses found in Contractor's Prime Contract No. DE-AT30-07CC00014 that are incorporated by reference in this Contract and that shall apply as if they were set forth in their entirety. All references to the DOE/Government and Contractor in the clauses incorporated by reference are substituted with Contractor and Subcontractor, respectively, with the exception of those clauses dealing specifically with rights inherent to the federal government, in which case references to the DOE/Government shall not be substituted. Such clauses include but are not necessarily limited to those granting to the government rights associated with intellectual property, and national security. All other references to the DOE/Government Contracting Officer in the Prime Contract are substituted with Contract Administrator, Contractor. The FAR clauses may be obtained at <http://www.acmcl.gov>.

The following additional or more current clauses are incorporated into this BOA by reference with the same force and effect as if they were given in full text.

FAR 52.204-7	Central Contractor Registration (July 2006)
FAR 52.222-42	Statement of Equivalent Rates for Federal Hires (May 1989)
FAR 52.223-14	Toxic Chemical Release Reporting (Aug 2003)
FAR 52.230-6	Administration of Cost Accounting Standards (Apr 2005)
FAR 52.237-3	Continuity of Services (Jan 1991)
DEAR 952.209-72	Organizational Conflict of Interest (Alternate 1) (Jun 1997)
DEAR 952-235-70	Key Personnel (Apr 1994)

BONDS

If requested by Contractor, Subcontractor shall obtain payment and performance bonds, each in an amount equal to 100% of the Task Order price. The bonds shall be written on forms satisfactory to Contractor. Subcontractor's sureties shall be only those approved by the Department of Treasury, as indicated in Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."

TRAVEL EXPENSE REIMBURSEMENT

In the event travel is authorized, reimbursement shall be invoiced as other direct cost (ODC). Costs incurred by Subcontractor personnel on official Project business are allowable, subject to the limitations contained in Federal Acquisition Regulation (FAR) Part 31.205-46. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge. Such actual expenses for travel shall be allowable to the extent that they do not exceed on a daily basis the maximum lodging and/or per diem rates in accordance with Federal Acquisition Regulation (FAR) part 31.205-46. Failure to comply with these provisions may cause any request for reimbursement to be denied. Further information may be found at: <http://www.usa.gov> and <http://www.fedprocsearch.com/buyer/Welcome.jsp>.

Expense reimbursement requests must be submitted in a timely manner. The following information is required to be submitted with the request for reimbursement: (1) date and place of the expenses; (2) purpose of the trip; (3) name of the person on the trip; and (4) any required Buyer's pre-approval.

CONFIDENTIALITY

- A. Company confidential and proprietary information ("information"), if any, is defined as, but not limited to, the whole or any portion or phase of business information (e.g. performance, sales, finances, contracts, marketing, plans, techniques, pricing, customer lists, Subcontractor lists, etc.) and technical information (e.g., ideas, technical data and concepts, trade secrets, inventions, systems, plans, programs, studies, techniques, hardware, software, algorithms, source code, object code, drawings, sketches, designs, developments, implementations, processes, procedures, formulae, data, reports, computer programs, charts, improvements, etc.) which is not generally known outside the parties and their respective affiliates, which the disclosing party desires to protect against unrestricted disclosure or competitive use, and which is furnished pursuant to this contract and appropriately identified as being proprietary when furnished.
- B. Information may be in physical form (e.g., in writing, in documents, etc.) in electronic form (e.g., via electronic transmission or on computer readable media such as hard drive, diskette or CD-ROM), in visual form (e.g., viewing of objects such as prototypes or samples) and in oral form. To be information under this contract (i) proprietary information provided in physical form and electronic form must be conspicuously marked by the disclosing party as company confidential or proprietary and (ii) proprietary information provided in visual or oral form must be specifically identified by the disclosing party to the receiving party as company confidential or proprietary at the time of disclosure and reduced to a physical or electronic form, provided by the disclosing party to the receiving party, and conspicuously marked as company confidential or proprietary, within fourteen (14) days of the date of disclosure.
- C. The party receiving the information agrees to hold such information in confidence and to otherwise not release, disclose, or disseminate the information contrary to the provisions of the contract for a period beginning on the date of this contract and lasting through and until two (2) years from the termination date of this contract. During the period under which the receiving party must hold such information in confidence, the receiving party shall apply such measures to prevent the disclosure, publication, or dissemination of the information as it utilizes to protect its own company confidential and proprietary information but not less than a reasonable degree of care.
- D. Proprietary information that is exchanged may be used by the receiving party only in connection with the contract. It may be provided solely to those officers, directors, employees, agents, consultants and personal services contractors within the receiving party's organization (i) possessing a need to know the information (ii) who have executed a general agreement (i.e., covering information of all third-parties) or specific agreement (i.e., covering information from the other party to this contract) with the receiving party under which they are legally obligated to protect third-party company confidential and proprietary information and (iii) where such agreement is such that it requires the protection of information. Neither party shall divulge or use the information for any purpose not connected with the contract.
- E. The receiving party shall not release, disclose, or disseminate information to third parties absent the express prior written permission of the disclosing party. Where the disclosing party provides such express prior written permission, the receiving party may disclose the information protection agreement with such third-parties containing substantive provisions providing the same degree of protection for the information as provided for in this Agreement.
- F. The obligation with respect to the protection and handling of information, as set forth in this contract, is not applicable to the following: (i) information that becomes lawfully known or available to the receiving party from a source other than the disclosing party, including the Government, and without breach of the BOA by the recipient; (ii) information developed independently by the receiving party; (iii) information that becomes available to the receiving party by inspection or analysis of products available on the market; (iv) information that is within, or later falls within, the public domain without breach of this contract by the recipient; (v) information disclosed with written approval of the other party; (vi) information disclosed by the party that has also been provided to others on a non-restricted basis; (vii) information provided after the termination date of this contract; (viii) information which is not marked and identified as company confidential or proprietary in accordance with Article B, above, and (ix) information released on a restricted basis pursuant to a judicial or other lawful Government order, but only to the extent provided by such order and only after notice of the proposed release is provided to the disclosing party to provide it with an opportunity to pursue its interests before such governmental entity.

LOWER TIER SUBCONTRACTS

Prior to placement of lower tier subcontracts, the Subcontractor shall ensure that lower-tier subcontracts contain all of the clauses of this contract (altered when necessary for proper identification of the contracting parties). Subcontractor is required to submit a list of its lower-tier subcontractors and/or consultants to be used in conjunction with its performance, list to be updated as necessary. In addition, the Subcontractor shall submit a brief description of lower tier subcontractors' intended duties, responsibilities, and experience. Contractor shall approve any lower-tier contracts prior to Subcontractor entering into such arrangements.